

such matters involved in the controversy to be determined by the suit at common law, in relation to which dispute alone they were interrogated by the plaintiff. This copy of the account from the Orphans' Court must therefore be expunged from this case.

The plaintiff has also objected to what the defendant Mary has said in relation to the freight; because what she states could, at most, amount only to a verbal agreement, and the contract of the parties was in writing.

This allegation made by the defendant Mary, in the joint and several answer of these defendants, is evidently introduced as an avoidance of so much of the plaintiff's claim; and therefore, could be of no weight on any prayer for relief here; unless sustained by proof. And if offered to be so established, the question would then arise, whether such proof should not be rejected so far as it was attempted to be relied on as giving an interpretation to a written contract; or whether it would not be admitted upon the ground, not of construing, but as an addition to, or alteration of a written agreement.

If the defendant Mary were offered as a witness, to prove the facts she states, it might be objected, that she was incompetent; because of having been, at the time she obtained a knowledge of the facts of which she speaks, the wife of the party as to whose contract she testifies; as husband and wife are incompetent witnesses for or against each other, as to all matters occurring during the marriage, as well after as during the coverture. *Nelius v. Brickell*, 1 *Haywood's Rep.* 19; *Doker v. Hasler*, 21 *Com. Law Rep.*

406 416. If, however, *this was a bill for relief here, and this case was set down for hearing on bill and answer, then this allegation, in the answer of the defendant Mary, would be taken for true, although she might be deemed incompetent to testify to the fact as a witness. *Lenox v. Prout*, 3 *Wheat.* 527. But as to the relevancy, legality, and competency of any testimony brought out by a bill of discovery, it does not belong to this Court to decide; because such questions can only be determined, with propriety, by the Court of common law for whose use the discovery has been required. *Bishop of London v. Fytche*, 1 *Bro. C. C.* 98; *Hindman v. Taylor*, 2 *Bro. C. C.* 8.

It is a general rule, that on a bill of discovery the plaintiff must pay to the defendant all his costs in this Court; and that too, including all expenses incurred by the defendant in resisting motions made in the case by the plaintiff. And the defendant's right to make his demand, accrues as soon as he has answered, allowing to the plaintiff a reasonable time to look into the sufficiency of the answer. But it has been thought that this rule is too general; that it ought, at least, to be so modified, so that the plaintiff should not be bound to pay costs where, upon demand, the defendant had refused voluntarily to make the requisite disclosures, so as to com-